



December 10, 2012

TO: Department of Ecology  
FROM: WSAC  
RE: Concerning SEPA Phase II rule making

WSAC members of the SEPA Advisory Committee enter Phase 2 of the review with the following as our guiding principles:

- Reduce duplicative processes/reviews - many of the exemptions in WAC 197-11-800 have not been updated since 1984. Since that time several new environmental laws have been passed including the GMA; we should make changes where there is overlap.
- Maintaining our strong commitment to environmental protection - changes to the rule, such as those proposed in Phase One, should be made without compromising environmental standards.
- Recognizing that each of our 39 counties is different - ensure there is continued flexibility in the rule in order to recognize local circumstances.
- Rule should be as clear and concise as possible and written to evolve with changing circumstances.

The WSAC members of the SEPA Advisory Committee suggest the following as topics for Phase 2 of the Advisory Committee discussions:

#### 1. Exceptions

Several of the categorical exemptions have "exceptions." All of these should be reevaluated to determine whether they have continuing validity in light of regulatory changes since the 1980s. The most problematic for counties and cities is the "lands covered by water" exception that applies to subsections (1), (2), (3), (6), and (23). As a starting point, the exception is ambiguous and has received a variety of interpretations by local governments. In addition, with modern critical area regulations adopted by counties and cities under the GMA, its continued necessity is questionable. We also would note that under WAC 197-11-835, when WDFW is the lead agency, hydraulic project approvals involving removal of less than fifty cubic yards of streambed materials are categorically exempt. The same project, when a county or city is the lead agency would not be categorically exempt.

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## 2. Land use and development exemptions

Subsections (1) - (3) and subsection (6) deal with various aspects of land use and development activities. In some instances, the determination of Whether a particular activity is categorically exempt is dependent on the legal structure of the proposal. For example, under the proposed rule, a county or city can increase the categorical exemption threshold for construction of up to 30 single family residences within a GMA urban area or a city. However, under subsection (6), a subdivision proposing to construct 30 homes would not be categorically exempt.

## 3. Personal Wireless Service Facilities

Subsection (25) provides an exemption for some types of personal wireless service facilities. At a minimum, this subsection should be evaluated in light of recent federal legislation limiting local authority over some types of wireless facilities. In addition, there may need to be changes in order to deal with the evolution of the technology.

## 4. Non-project actions

SB 6406 adopted legislative categorical exemptions for a variety of non-project actions. There should be a review of the current exemptions in subsections (20) and (21) and consideration of additional exemptions for minor code amendments and other non-project actions that are unlikely to have an adverse environmental impact.

## 5. SEPA/GMA Integration

This is one of the topics included in SB 6406's direction to Ecology. We believe this is an important issue that will take considerable effort in order to make progress.

## 6. Notice

It was clear from the discussion during Phase 1 that many parties use SEPA as a way to obtain notice of proposed development activities. The issue of notice needs to be dealt with in a more holistic manner. Forcing applicants to complete a SEPA checklist and local governments to make a threshold determination only as a way to provide notice is inefficient.